

# ELKINS FAMILY LAW TASK FORCE UPDATE



JUDICIAL COUNCIL  
OF CALIFORNIA  
ELKINS FAMILY LAW TASK FORCE

JANUARY 2009

## Task Force Progress Made to Date

In its first six months of operation, the task force has focused on defining its values and principles, identifying areas of focus for the development of recommendations, and collecting information through research, interviews, focus groups, public input, and more. These data collection and research efforts are described in further detail below.

The Task Force is using a **collaborative process** to identify the most pressing issues facing the family courts and the people they serve. Going into 2009, the primary objective for the task force is to further define the areas of focus for recommendations to the Judicial Council. These focus areas will reflect the guiding principles. The task force anticipates prioritizing focus areas for recommendation during its time-limited tenure, and suggesting a research agenda and possible additional projects and reforms for the Judicial Council's further consideration and development to follow on the work of the task force.

## *Working Groups and Progress to Date*

To guide information review and analysis, the task force established four working groups, as follows:

### Research and Best Practices, cochaired by Judge Barry Goode and Ms. Ana María García

This working group is focused on big picture, long-term possibilities for changes and reforms in family law. The working group is looking to courts in California, within the US, and in other countries to explore possible changes. The working group has conducted extensive research both within and outside of California. It has also reviewed local family law rules from all California superior courts. The questions that have framed this working group's initial inquiry include:

- What are the best/most promising practices in family law statewide, nationally and internationally?
- What has been done in the *functional* areas of family law (e.g. spousal support; child support; custody & visitation)
- What research has been done on the *general topics* such as how family law is handled in other states and countries?
- How can parts of the system be made less adversarial?

#### Process Improvements, cochaired by Judge Mark Juhas and Mr. Mark Minyard

This working group is focusing on the critical changes that are needed to improve practice and procedure in the current environment. The working group is considering proposed changes to rules, practices, and procedures in family law, with a primary focus on fair, consistent, effective, and efficient trial and hearing practice. The working group has agreed that its priority areas will be:

- **Rules:** review of statewide and local rules particularly regarding trial and hearing procedures.
- **Differentiated Case Management:** identifying potential triage systems to determine appropriate levels of service for different types of cases.
- **Simplification of Processes and Forms:** examine strategies and technologies to make court procedures more efficient and minimize unnecessary steps and paperwork, while protecting due process. Streamlining procedures will assist all participants in the system by allowing self-represented litigants to complete less complicated cases with less assistance and enable courts to spend more time on more complex matters.

#### Representation, cochaired by Justice Joan Irion and Ms. Laurie Nachlis

This working group will make recommendations about how to ensure access to fair and impartial justice in the simplest to the most complex cases. The working group is seeking input from represented and self-represented parties about what they need and how to increase the availability of representation. In addition to analyzing existing family procedures that may make representation unduly difficult for litigants to obtain initially and afford throughout the case, the Representation working group has initially focused on the following questions/issues:

- In which cases, issues or phases of family law matters are litigants most able to effectively self-represent and conversely, where is attorney advice or representation most needed?
- What services can courts offer to simplify family law processes and procedures, such that litigants may need less legal assistance or assistance at later points in the process?
- What barriers to securing and maintaining attorney and other professional assistance exist from the litigant's perspective, and what are possible ways to overcome those barriers? Why is unbundled legal representation not used more frequently?
- What are the demographics and economics of family law practice and other factors, including the negative perception of family law practice that may impact the available attorney pool?

#### Improving the Status of, and Respect for, Family Law Litigants and Family Law, cochaired by Judge Nancy Wieben Stock and Ms. Suzanne Clark Morlock

This working group is focusing on the leadership, education, support, and resources that are needed to improve the status of, and respect for, family law and litigants and has initially focused on the need to develop education, communication, and advocacy. The working group believes that Standard of Judicial Administration 5.30 is a useful framework

for much of its anticipated work. Standard of Judicial Administration 5.30 addresses issues including judicial assignments to family court; case assignment; the importance of family court; the unique role of a family court; appointment of attorneys and other persons, and more. The four components of procedural fairness ~ trust, respect, voice, and neutrality ~ will serve as ideal measures of success for the anticipated recommendations related to education, communications, and advocacy. In addition, the need for sufficient resources to provide the services necessary to meet litigants' diverse needs in family law will be a major focus of this working group's efforts. The working group will identify different possible strategies to acquire new resources, reallocate current resources, make improvements that do not require new resources, and make better and more efficient use of existing resources.

#### *Public Input*

A guiding principle of the task force has been to ensure that its work is open and accessible to the public. Going forward, all Task Force meetings will include time for public comment, and be open for the public. Additionally, the Task Force established a Web site early on that includes an e-mail address to which members of the public may send comments and suggestions.

The task force will have a robust public comment period when it releases its draft recommendations so that interested and affected stakeholders may review, make comments, and suggest modifications to the proposed recommendations. The task force will review and consider all of the input received in the public comment period. The task force believes strongly that in order to achieve its goals and make improvements in the family law system, it must continue to collaborate closely with a broad range of groups and individuals.

#### *Focus Groups*

In order to more formally and systematically collect input from various stakeholders, The Task Force has contracted with Ceres Policy Research to conduct focus groups. Under the direction of the task force, the contractor has conducted 20 focus groups of one and a half hours in duration, and included 6 to 12 participants in each group. Two additional focus groups for litigants are anticipated for early 2009. The focus groups conducted to date, by participant type, are as follows:

- Represented and self-represented litigants (including groups in English and Spanish);
- Judicial officers (three groups);
- Attorneys (three groups); and
- Court staff and other court professionals (six groups, including two groups of court clerks, two groups of self-help center staff/family law facilitators, and two groups of family court services staff).

The focus groups have taken place in six counties, chosen to cover a wide range of California's local family courts, as well as at selected statewide conferences. The following factors were considered in choosing the study counties:

- Geographic factors, including urban/rural, physical area, and population size;
- Presence of non-English-speaking or underserved populations; and
- Any promising programs/practices instituted in the family court.

The focus group contractor worked with a designated liaison in each court to identify ways to recruit participants to ensure representation of a broad range of experiences in the family law system. Recruiting methods were designed to target litigants whose cases were active in the last two to three years, both with and without attorneys, with a variety of family law case types, and from a variety of demographic groups.

#### *Bar Survey*

In order to most effectively include the input of attorneys throughout the state, the Task Force developed a survey for family law attorneys that was made available electronically and publicized on the California State Bar Web site, the Family Law Section of the State Bar, and through local bar associations. The attorney survey included questions designed to solicit feedback on those aspects of family law practice and procedure that are working well, areas for improvement, local and statewide processes that are perceived as more or less effective, and ways to improve access or address concerns related to access to family courts.

Responses on the attorney survey are due by January 16, 2009, and results will be shared with the Task Force at its February meeting.

#### Next Steps

The task force plans to meet in February, May, and September of 2009. Members will receive reports from the survey, focus groups, and extensive comment from the courts, the bar, professional stakeholders, litigants, court observers, and the public that will help inform its recommendations. The process of collecting information from multiple sources through a variety of methods will ensure that the Task Force receives and considers broad input and a wide range of perspectives as it develops potential recommendations. No single way of gathering information is comprehensive; therefore the task force is using many different data sources in order to ensure a sound methodology in its work process.

In May, the task force will meet for two days to refine the areas in which specific recommendations may be made and the details of those recommendations. Members will discuss and identify recommendations for circulation for public comment during September and October, 2009. During the public comment period, the task force will hold regional meetings and public hearings to inform the court community and the public of the recommendations and gather input on their feasibility, additional suggestions, and

challenges courts may face if the recommendations were to be presented to the council and approved for implementation.

The task force will submit its recommendations to the Judicial Council in spring 2010.

For more information, please contact us at [elkinstaskforce@jud.ca.gov](mailto:elkinstaskforce@jud.ca.gov)